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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Fifty-ninth session

SUMMARY RECORD OF THE 1477th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 7 August 2001, at 10 a.m.

Chairman: Mr. SHERIFIS

CONTENTS

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (continued)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Mali

ORGANIZATIONAL AND OTHER MATTERS (continued)

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION, THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (continued)

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The meeting was called at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued) (CERD/C/411 and HRI/CORE/1/Add.87)

Review of the implementation of the Convention in States parties whose reports are excessively overdue

Mali (HRI/CORE/1/Add.87)

1. At the invitation of the Chairman, Mr. Kamate and Mr. Maïga (Mali) took places at the Committee table.

2. Mr. KAMATE (Mali) informed the Committee that a draft report had been prepared and a final report would be submitted by the end of 2001 which would describe developments since Mali's sixth periodic report (CERD/C/130/Add.2). He therefore requested that consideration of the report of Mali be rescheduled for the Committee's sixtieth session in March 2002.

3. He recalled the information on Mali's land and people, history and political situation contained in its core document of 17 February 1998 (HRI/CORE/1/Add.87) and stressed the important role which non-governmental organizations (NGOs) and the labour movement played in promoting democracy and human rights. Protection of civil and political rights was guaranteed by the international instruments to which Mali was a party as well as by its national legal framework, and the Constitution prohibited discrimination and guaranteed full equality for all. The rights of minorities were protected and, in that context he said that the recent conflict involving the Tuareg minority had not been caused by discrimination or by attempts at genocide but, in the opinion of the Government, had been symptomatic of a problem of inadequate development. Efforts were also under way to protect vulnerable groups such as women, children, the elderly and the disabled, through, for example, the creation of a geriatric care centre, family law reform, an action plan for the development of children and the strengthening of the role played by women. Basic freedoms, the right to life, security of person and protection from degrading treatment were also guaranteed by the Constitution and he noted that an individual accused of a crime had the right to legal counsel and, if imprisoned, the right to be examined by a physician. The right to vote was guaranteed by the Constitution, freedom of the press was encouraged by the Government and there were some 30 press titles and 100 private radio stations. Freedom of religion was protected, as was freedom of association, with 2,500 associations present in the country. Freedom of speech was also an important right and he noted the annual celebration of Human Rights Day during which all citizens and associations had the right to raise human rights issues with the ministers of the Government in a ceremony broadcast live on television and radio.

4. Economic, social and cultural rights were also well protected. The right to work was guaranteed by the Constitution and a new Labour Code had been adopted in 1992; in 1997 a quota for the hiring of disabled persons in the public service had been instituted and the Ministry responsible for the civil service had a databank containing information which was made available to employers in an effort to protect the rights of the disabled. The right to strike and to

form unions was guaranteed and there were two major national union organizations. In the area of housing, while relatively few Malians owned their homes, the Government had established a housing bank and real estate agencies, and there had been some improvement. A programme for improving access to health care and social services had been implemented.

5. Legislative and administrative measures which corresponded to the provisions of articles 6 and 7 of the Convention included, in addition to the role played by the Constitutional Court and the regular court system, the creation of a National Advisory Commission on Human Rights which advised the Government on, and recommended, policies in the human rights area. In addition, as a result of the reorganization of the judiciary in 1998, administrative tribunals had been created. With regard to education and training, he regretted to report that, on account of a lack of infrastructure and inadequate government resources, large segments of the population still did not receive an adequate education, but legislation had been enacted to promote education, combat illiteracy and protect national languages. As three quarters of the population over six years of age had still never attended school, 15 per cent had completed only primary school and only one per cent had continued on to higher levels of education, a 10-year plan for the development of education was being implemented. He pointed to the important role played by the media in increasing awareness of human rights and eliminating discrimination, in particular a national radio programme called "Legal Chronicles" which specialized in informing citizens about human rights issues.

6. Malian society promoted mutual understanding based on solidarity and dialogue. His Government was fully aware of the many problems which it faced, and in 1997-1998 had invited a mission from the Office of the United Nations High Commissioner for Human Rights to visit the country and identify the most pressing needs, which included legal reform, police and prison reform, strengthening of human rights and democracy and promotion of the rights of women and children. He stressed that Mali's normative framework guaranteed respect for human right and, while discrimination existed, it was attributable to the attitudes and acts of individuals, and not Government policy.

7. The CHAIRMAN took note of the delegation's request to carry over consideration of its report to the sixtieth session and called the attention of the delegation to the availability of technical assistance form the Advisory Services of the Office of the United Nations High Commissioner for Human Rights and to the Committee's revised guidelines for the submission of periodic reports.

8. Mr. de GOUTTES (Country Rapporteur) welcomed the presence of the delegation and commended the informative oral presentation as a sign of the Government of Mali's desire to renew its dialogue with the Committee, interrupted, unfortunately, following presentation of its sixth periodic report in March 1986 (CERD/C/105/Add.7). He noted Mali's exemplary reputation in its region for its commitment to democracy and human rights, despite its grave economic situation. It had submitted a core document which dated from 1997-1998 (HRI/CORE/1/Add.87) and he recalled that the State party had most recently presented reports to the Committee on Economic, Social and Cultural Rights (E/C.12/1994/17) and to the Committee on the Rights of the Child (CRC/C/3/Add.53). There were a number of issues which he felt should receive special attention in the State party's next periodic report.

9. With regard to general issues, updated social and demographic information and social, economic and cultural indicators, in particular with regard to ethnic groups, and information on measures to protect human rights and promote economic and social development, should be provided. More information on the current situation regarding the Tuareg people would also be welcome, as would information on the current political and institutional framework since the return of democracy and the new Constitution in 1992. He highlighted the originality and importance of the Human Rights Day (HRI/CORE/1/Add.87, para. 45) held every year on the anniversary of the Universal Declaration of Human Rights. Although some tensions remained in Malian society, as evidenced by the general strike in July 1999 and unrest among teachers and students, it was encouraging that peace had returned to the north of the country, following the Tuareg rebellion and the conflict between nomadic peoples and the sedentary populations. While he recognized that Mali was one of the least developed countries, it would be useful to have more information on the extent to which ethnic groups, in particular nomad populations, were participating in economic development, and also further information on unemployment, especially among young people, a problem which had been highlighted in the core document (para. 37).

10. The second part of the report, more detailed, would provide information on the Government's implementation of the various articles of the Convention. In relation to article 2, the report should, among other things, comment on the concern expressed by the Committee in 1994 that the ban on political parties based on religious, ethnic or regional affiliation might be used by one ethnic group against another or by the State against an ethnic group, or could be perceived in those terms. Regarding article 4, there should be an updated discussion of the Penal Code provisions combating racial discrimination, and the Committee should be informed whether domestic legislation now prohibited organizations espousing racial hatred or discrimination, which had not been the case earlier. Under article 5, the report should specify its policy and action to ensure observance of the various rights of the different ethnic groups, particularly the nomadic peoples, and to preserve their cultural heritage while safeguarding national unity. It should further report on the situation of women, who in 1994 had apparently still been subjected to economic and educational discrimination, on the fate of children forced into hard labour or taken from their villages to become urban beggars or to be given up for international adoption, and on the situation of displaced persons and refugees and of the almost 4 million Malian emigrants living abroad, out of a population of 11 million.

11. Regarding article 6, the next report should indicate what remedies were available to the victims of racial or ethnic discrimination and whether any cases had been brought or decided against the perpetrators of racist acts, and any compensation awarded to the victims. Interesting information had been given in the 1998 core document (HRI/CORE/1/Add.87, para. 44) regarding the many NGOs and human rights associations that worked independently in Mali - testimony to the fact that the public had been mobilized to participate in the country's democratic development - and regarding the Government-sponsored Day referred to earlier. It would in addition be useful to have a specific indication of the measures taken by the Government to develop the teaching of human rights and the culture of interracial tolerance to law enforcement officials such as the police, the army, prison guards and members of the judiciary, and to publicize the provisions of the Convention and the Committee's concluding

observations. In the meantime, he would look forward to entering into a full dialogue with the delegation of Mali during the consideration of its periodic report at the Committee's next session.

12. Mr. YUTZIS said it was gratifying that Mali, rather than simply submitting the usual note verbale, had sent a delegation from the capital to present what amounted to a preliminary report full of useful information. The Committee now awaited the forthcoming periodic report.

13. Mr. ABOUL-NASR said that both the instructive introductory report by the delegation of Mali and Mr. de Gouttes' comprehensive remarks had given the Committee a feeling for the situation in the country. The periodic report should definitely touch on the alarming situation of Malian children, many of whom were given away or sold by their parents into what actually amounted to slavery, to work in the fields under harsh conditions or to become prostitutes. The Government should explain, in the West African context, how such shocking practices could persist into the twenty-first century, even in a desperately poor country, and examine whether they revealed any tinge of racism against certain ethnic groups.

14. Mr. FALL, welcoming the fruitful debate just initiated, endorsed the previous speakers' remarks.

15. Mr. KAMATE (Mali) thanked Mr. de Gouttes and the other members of the Committee for being so welcoming and making such pertinent comments, of which they could be assured the delegation had taken good note. Its report that day, together with the statistics provided, should be considered a prelude to the Government's next periodic report.

16. The CHAIRMAN, suggesting that the analysis just provided by Mr. de Gouttes should be helpful to the Government as it finalized its draft periodic report, said that the Committee had greatly appreciated the presence of the delegation and its interesting comments. In addition to availing itself of technical assistance from the Advisory Services should it so wish, the delegation was welcome to meet any member of the Committee before leaving. The Government clearly wished to resume a fruitful dialogue with the Committee.

17. The delegation of Mali withdrew.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 3) (continued)

18. Mr. ABOUL-NASR, recalling the Australian press release received earlier, said that a recent Australian newspaper article, a copy of which had been circulated to members, regarding the report by Professor Bayefsky assessing the United Nations human rights treaty body system contained the astonishing information that her report had actually been commissioned by the United Nations High Commissioner for Human Rights and that the recommendations in the report were being considered by the Secretary-General. During her meeting with the members of the Committee, the High Commissioner had never informed them that she had been the one to commission the report, nor had she afterwards publicly dissociated herself from the recommendations, which had been insulting to the Committee. It was essential for the United Nations to distance itself from such a report, even if it had commissioned it.

19. The CHAIRMAN, speaking in his personal capacity, said that the Committee had the options of sending a letter to the High Commissioner or issuing a formal statement on the whole matter, or doing both.

20. Mr. THORNBERRY, speaking as convenor of the open-ended working group to draft a position for consideration by the Committee, said that all members were welcome to consult with him, and agreed that the options were not mutually exclusive.

THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE (agenda item 10) (continued)

21. Ms. JANUARY-BARDILL, speaking as convenor of the contact group for liaison with the Preparatory Committee for the World Conference said that, owing to much behind-the-scenes discussion of the contentious issues, there had been a shift in positions, especially on the issue of slavery, given the willingness of various Governments, the United States in particular, to express deep regret and profound remorse. The task now was to find more acceptable wording on the reparations issue. The South African Ministry for Foreign Affairs had urged delegates not to take firm positions in the negotiations but to respect the need for give and take. Currently, the Israeli-Palestinian issue seemed to be the biggest stumbling block of the three.

22. The two working groups, on the draft Declaration and the draft Programme of Action respectively, were also making faster progress on the language of the two texts, and the contact group would go into their meetings periodically to keep abreast of developments. It had distributed as widely as possible the comments prepared by Mr. de Gouttes and Mr. Diaconu on behalf of the Committee, but had received no other textual proposals from Committee members. The Committee might wish to limit itself to those two suggestions made already, leaving it to draft the position of the Committee as a whole on the finished documents.

23. Mr. YUTZIS said that, as negotiations in the Preparatory Committee were still in a state of flux, it might be wiser for the Committee to concentrate on its response to the draft resolution of the Sub-Commission on Human Rights on recognition for responsibility and reparation for massive and flagrant violations of human rights which constitute crimes against humanity and which took place during the period of slavery, of colonialism and wars of conquest, pending the outcome of the debate concerning the draft Declaration and Programme of Action.

24. Mr. PILLAI asked whether it would be possible to ensure that the Committee immediately received any documents issued at the end of the Preparatory Committee's session, so that it could consider them during the last week of its own session.

25. Mr. de GOUTTES stated that a plethora of initiatives by many different organs would not necessarily facilitate the work of the World Conference. The bulk of the work on compensation and reparation was being done in intergovernmental and regional groups. The Committee's representatives in the contact group should keep members informed about the progress of discussions at intergovernmental and regional level and the Committee should wait until compromises had been reached at that level before adopting a stance on such a sensitive issue.

26. Mr. ABOUL-NASR said that he would consider it strange if the Committee did not voice its opinion on the question of compensation. The Sub-Commission's resolution was worthless, because it merely called for a debate on the subject and stopped short of demanding compensation. In his view, the Committee should require that compensation be mentioned in the operative part of documents emanating from the World Conference.

27. Mr. SHAHI agreed with Mr. Aboul-Nasr that the Sub-Commission's resolution was insubstantial, but suggested that the Committee should be guided by Mr. Valencia Rodriguez as to whether it should bring its position on compensation to the attention of the drafting committees.

28. Mr. BOSSUYT questioned the advisability of the Committee giving its opinion on substantive issues of the World Conference at the current delicate stage of negotiations. The Committee should, however, endeavour to ensure that the Declaration and Programme of Action contained explicit references to the Committee and the Convention. The roles of the Sub-Commission and the Committee were somewhat different, in that the Sub-Commission had had only one opportunity to express its opinion, whereas the Committee had done so repeatedly in the past and would also be sending a sizeable delegation to the World Conference. The time was not yet ripe for the Committee to adopt a position on such a politically sensitive matter.

29. Mr. VALENCIA RODRIGUEZ said that he still believed that the Declaration and Programme of Action should contain a reference to compensation or reparation. When a highly sensitive issue was under consideration, it was necessary for all those directly and indirectly connected to give their views. That did not mean that all the ideas put forward had to be accepted. A wide variety of opinions enriched a discussion and helped to produce a consensus. The Committee might well follow the example of lawyers who initially upped the ante in negotiations so that they had an acceptable fallback position, if should request action even at the risk of it being rejected. For those reasons, he supported Mr. Aboul-Nasr's statement and proposal.

30. Mr. ABOUL-NASR asked how compensation could be termed a political issue. A call for compensation might be controversial, because the former colonial Powers did not want to make reparations, but fundamentally it was a humanitarian request.

31. Mr. YUTZIS said that it was useful to identify points of agreement and disagreement, since the Committee would have to decide at the current session what its contribution to the Declaration and Programme of Action was to be. He had changed his mind since he had perceived what lay behind some of the attitudes of the Group of Western European and Other States. In recent weeks the European Union had rejected the inclusion of some important terms in the Declaration and, in his opinion, some States were going too far in trying to cover up certain harmful repercussions of racism. The dividing line between political and humanitarian considerations was thin. At times, there was a reluctance to ponder humanitarian issues because they were troublesome, and hence they were dubbed "political", while at others political questions were raised on the pretext that they were humanitarian. It was therefore advisable to wait for the results of the current negotiations before deciding on the Committee's position.

32. Mr. RESHETOV said that, while the Committee could not exert a decisive influence on the documents being drafted for the World Conference, the questions under consideration were of fundamental importance as they concerned matters of principle. He had come to realize that the perception of Zionism contained in an earlier General Assembly resolution was erroneous and that current breaches of international humanitarian law by the State of Israel had nothing to do with Zionism, which was part of the history of the Jewish people.

33. Western and Russian television programmes dealing with compensation were worlds apart. The Russian television broadcast showing the handing over of German compensation to the victims of the Nazi occupation and to people who had been obliged to work as forced labourers had placed the emphasis on reconciliation and looking to the future. There was appreciation for the way the German Government had handled the issue and the action in question could certainly not be termed political. The same could be said of many other cases of compensation for past wrongdoing. Compensation and apologies for events in the past were certainly not just a matter of politics, although he agreed that sometimes resolving a specific question of compensation was a very complicated task.

34. Mr. BOSSUYT said that the texts being drafted for the World Conference contained some highly political proposals. The Committee must take care, therefore, to be realistic in its approach and, in particular, not to lose sight of legal aspects. In that regard, it seemed inappropriate to equate the misdeeds of the Holocaust, which involved the deliberate extermination of millions of people, with the practice of slavery, to all intents and purposes eradicated well over 100 years previously and practised at a time when there were no international rules or legislation to deem such activity a crime. Surely a clearer case for comparison was the genocide perpetrated in Rwanda only seven years previously, for which even the relevant United Nations report had stated that the Organization had to assume some responsibility, and whose consequences in terms of suffering and loss of life it would be impossible to appraise for the purpose of reparations.

35. Mr. THORNBERRY questioned whether the Committee should base its response on the Sub-Commission draft resolution, especially in view of the preambular part, which contained a number of elements, including references to recognition and reparation, that had not been sufficiently accounted for; in particular, the question of reparations could not be addressed until responsibility had been acknowledged. That text was highly doubtful, therefore, as a basis for a consensus position by the Committee. On the other hand, the latter had the Convention, particularly article 6, as an appropriate focus for producing a statement that would, inter alia, make clear the Convention's significance for the Conference process and also highlight the Committee's role.

36. Mr. de GOUTTES said that the debate on the consequences of slavery and colonial conquest reflected what seemed to be a constant misunderstanding between political and legal minds. As a jurist, he was against the manipulation of legal concepts for political purposes. In that connection, he noted that Mr. Yutzis had referred to certain objections raised, one being about the use of the term "systemic". The concept of crime against humanity had a legal definition, based on specific acts committed by individuals or groups; to try to broaden its

application would risk abuse and dilution of the definition, as seemed to have occurred in other forums, thus undermining the juridical approach to matters of alleged genocide and other crimes against humanity.

37. Mr. VALENCIA RODRIGUEZ said that, although the Committee could not, as such, adopt a position on a topic with such political overtones, it could take a stance based on the Convention, in particular the right to special measures or reparation provided for in article 6 and article 2, paragraph 2. Perhaps the Committee could produce, if not a formal declaration, some wording to satisfy those members of the Committee who felt that the Declaration and Programme of Action to be adopted at the World Conference should reflect the Committee's views. Although the Committee could not force the working groups to adopt a particular position, it could and should have its stance noted, in particular the Committee's importance for implementation of the Convention's provisions. He hoped that - as had been done for the wording of article 14 - an acceptable formula could be drafted, with the support of Mr. de Gouttes and other members who could ensure a sound legal basis for the text. Although mindful of the desire for prudence, he thought that the Committee should strive to put its case as forcefully as possible.

38. Ms. McDOUGALL said that in the best societies there was not constant conflict but synergy between lawyers and politicians, the latter being people's representatives and, in fact, the source of law. With regard to the texts being drafted in the working groups, it was the Committee's responsibility to ensure that its work and central role were duly noted, but that meant not allowing considerations of prudence to override matters of principle. Although she shared the concerns voiced by Mr. de Gouttes, particularly with regard to the legal definition of crimes of genocide, the fact was that the approach to crimes against humanity had been constantly evolving since the days of the Nürnberg Tribunal, and continued to do so, for example in actions brought in cases relating to events in the former Republic of Yugoslavia and in consultations leading to the Statute of the International Criminal Court. Therefore, although she shared the concern about the trivializing of terms, she saw no serious risk of doing so in efforts to address situations that, in the view of much of the world community, warranted attention.

39. The Sub-Commission draft resolution in question, if taken in a broader context, did make a substantial point in that the real question was not whether reparations were due but whether the very subject of reparations should be debated. Indeed, since some States were threatening to withhold participation in the World Conference if reparations were even mentioned on the agenda, she felt that the Committee should consider making a contribution on such a critical issue.

40. Ms. JANUARY-BARDILL said she agreed that the Committee should produce a formal statement. She welcomed the different disciplines represented by its various members and the valuable contributions they made to the Committee's work. It would be wrong, however, to take a solely juridical view of crimes against humanity. Unless a more humanitarian approach was taken there was a risk of failure to see how slavery, for example, had dehumanized all involved in it, slave owners and slaves alike. It was sometimes useful, therefore, for the Committee to take a broader view of such terms.

41. Mr. YUTZIS proposed that Mr. Valencia Rodriguez should approach the members of the Committee with a view to producing a form of words to reflect its views.

42. The CHAIRMAN agreed that it would be useful to produce wording to reflect what had been an extremely important and fruitful debate. He invited Mr. Valencia Rodriguez to prepare a text accordingly, taking into account the statements made by Committee members and seeking, in addition, comments from those who had not spoken as well as assistance on the legal aspects from Mr. de Gouttes and any other interested members, drawing also on the help of the Committee's contact group.

43. Mr. VALENCIA RODRIGUEZ said that he would do his best to collate the views and comments of the Committee members accordingly.

The meeting rose at 1.05 p.m.